
CANADA / JUDGMENT

Velletta and Company v. Zmuda

2013 BCSC 1543

COURT

Supreme Court of British Columbia

DECIDED

26 August 2013

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2013 BCSC 1543 Velletta & Company v. Zmuda

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Velletta & Company v. Zmuda,

2013 BCSC 1543

Date: 20130826

Docket: 13-1631

Registry: Victoria

In the Matter of the Legal Profession Act,

S.B.C. 1998, Chap. 9, s. 70

Between:

Velletta and Company

Law Firm

And:

Krzysztof Zmuda

Client

Before: Master Bouck

Reasons for Decision

Counsel for the Law Firm:

M. Velletta,

G. Piper, A/S

The Client appearing in person:

K. Zmuda

Place and Date of Trial/Hearing:

Victoria, B.C.

July 15 and 24, 2013

Place and Date of Judgment:

Victoria, B.C.

August 26, 2013

Introduction

- [1] This is a client-initiated review of the law firm's bill issued to the client on September 25, 2012.
- [2] The bill claims fees of \$2,650 and disbursements of \$66.47. A retainer of \$500 has been applied by the law firm, leaving the amount outstanding at \$2,542.45.
- [3] Mr. Zmuda says that he should be reimbursed his retainer with the bill disallowed in its entirety. The chief complaint by Mr. Zmuda is that the law firm failed to achieve any result on his behalf.

Facts

- [4] The services provided by the law firm relate to a property insurance claim.
- [5] On or about February 18, 2012, water accumulated on the roof of Mr. Zmuda's home resulting in interior damage. A claim was made by Mr. Zmuda for the cost of repairing that damage. The insurer denied coverage for the claim.
- [6] Mr. Zmuda then approached the law firm for assistance. Mr. Zmuda had no previous dealings with the law firm and, indeed, no previous dealings with lawyers in general. Mr. Zmuda chose the law firm after a search of internet advertisements. The advertisement stated that the law firm offered a free initial consultation.
- [7] Mr. Velletta was the first member of the law firm to meet with the client.
- [8] Mr. Velletta is a senior member of the Bar, with over twenty-five years' experience in dealing with insurance claims. Prior to his call to the Bar, Mr. Velletta acted as an insurance adjuster.
- [9] Mr. Zmuda explained his circumstances to Mr. Velletta and provided the insurer's letter of denial. The letter was authored by an independent adjuster retained by Mr. Zmuda's insurer.

- [10] Mr. Velletta believed that the insurer's denial was wrong based on the policy wording and agreed to make a further written demand on Mr. Zmuda's behalf. Mr. Velletta recalls discussing his hourly rate with Mr. Zmuda and making the suggestion that junior lawyers have conduct of the matter in order to keep costs down. Mr. Zmuda says that costs were never discussed at this first meeting.
- [11] In any event, Mr. Zmuda did agree to provide a \$500 retainer. The parties did not enter into a written retainer agreement although the law firm's "new file instruction sheet" indicates that such an agreement was signed. The instruction sheet also indicates that Mr. Zmuda would be billed on a monthly basis.
- [12] Mr. Velletta also advised Mr. Zmuda that tradespeople should be retained to assess the damage done and determine the source of that damage. According to Mr. Velletta, the client was combative and difficult and did not wish to retain any such individuals. Nevertheless, Mr. Zmuda proceeded to contact such individuals who in turn provided written reports. The law firm received these reports in or about April 2012.
- [13] The insurer had already obtained an opinion on the cause of the damage; that opinion formed the basis of the claim's rejection.
- [14] On April 30, 2012, Mr. Velletta wrote to the insurer advising of the retainer and that a second opinion was being pursued on the cause of the water damage and remediation costs.
- [15] Thereafter, conduct of the file was delegated almost entirely to junior lawyers in the law firm, including articulated students. Mr. Velletta says that he oversaw the work being performed but did not bill the client for any of the time spent in this supervision.
- [16] The law firm's records indicate that the client spoke with the junior lawyers on several occasions in the spring of 2012 regarding the opinions being sought. In addition, electronic messages were exchanged between the client and various junior lawyers during that same period. Some of the communications concerned the opinions. The law firm sought clarification from the tradespeople regarding their reports and asked that the client assist in obtaining revisions to the written reports.
- [17] On June 15, 2012, a comprehensive letter was sent by the law firm to the independent adjuster regarding the claim. The letter is authored by an articulated student at the law firm. The letter encloses the opinions obtained and goes on to suggest that policy in place should cover the cost of remediation. The insurer is asked to reconsider the earlier denial of coverage. The letter was provided to the client under separate cover a few days later. However, the client says that he did not receive this letter until mid-August.

- [18] Between late June and mid-August 2012, communications between Mr. Zmuda and the law firm were somewhat sporadic. The law firm says that it was simply awaiting a response from the insurer. The insurer provided a copy of its own inspection report to the law firm sometime in late July 2012. That report, in turn, was provided to Mr. Zmuda as an email attachment.
- [19] On August 14, 2012, Mr. Velletta wrote to the independent adjuster a second time reiterating the position that the insurance policy in place should cover the cost of remediating the water damage. The letter addresses the insurer's report. The insurer is asked to re-visit the client's reports provided in June 2012. A more detailed analysis of the policy in question is also provided in the letter. It is not clear whether Mr. Zmuda received a copy of the letter or knew that the letter was being sent.
- [20] On October 3, 2012, the independent adjuster responded to the law firm confirming denial of coverage.
- [21] On October 11, 2012, Mr. Velletta wrote to the client outlining the steps that had been taken in the retainer and suggesting the possibility of litigation. The bill in question was enclosed with that letter.
- [22] The amount of the bill took Mr. Zmuda very much by surprise. The solicitor-client relationship was terminated shortly thereafter by Mr. Zmuda.
- [23] In a letter dated January 3, 2013 to the client, the law firm provides an explanation of its conduct during the retainer. While the steps taken on the client's behalf are outlined, the law firm also acknowledges that it should have reported "more frequently". An offer was made to draft the necessary pleadings on Mr. Zmuda's behalf, should litigation be pursued. In addition, the law firm advised the client to immediately file a proof of loss in order to preserve the right to commence an action against the insurer.
- [24] Mr. Zmuda did seek another legal opinion regarding his claim. This second lawyer assisted in preparing the proof of loss document. However, Mr. Zmuda has not pursued litigation and the insurer's position on the matter has not changed.
- [25] This appointment was taken out by Mr. Zmuda in May of this year.

Discussion

- [26] Mr. Zmuda feels strongly that the law firm has overbilled and accomplished nothing on his behalf. He denies receiving email or other written communication from the law firm despite objective proof to the contrary. He suggests that steps were taken without his authorization, including the preparation of the August 2012 letter to the insurer. It is suggested that the lack of communication, together with what Mr. Zmuda describes as a poor result, ought to lead to a substantial reduction if not complete disallowance of the law firm's bill.

[27] As discussed at the outset of this hearing, the onus is on the law firm to justify its bill. In that regard, the registrar must look to s. 71 of the Legal Profession Act, S.B.C. 1998, c.9, which provides as follows:

Matters to be considered by the registrar on a review

71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).

(2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:

- (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
- (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

(3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:

- (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
- (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.

(4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

- (a) the complexity, difficulty or novelty of the issues involved,
- (b) the skill, specialized knowledge and responsibility required of the lawyer,
- (c) the lawyer's character and standing in the profession,
- (d) the amount involved,
- (e) the time reasonably spent,
- (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
- (g) the importance of the matter to the client whose bill is being reviewed, and
- (h) the result obtained.

(5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

- [28] Mr. Zmuda's complaints regarding the law firm's communications are understandable. Fee disputes very often arise when the terms of the retainer are not set out in writing and agreed to before work commences. Mr. Zmuda was clearly aware that junior lawyers were working on his file, but apparently had only a vague notion of the cost of these services. That is not to suggest that fee estimates are necessary in every case, but the monthly billing suggested in the new file instruction sheet might have alerted the client to the ongoing costs. However, that observation does not mean that the law firm is disentitled to its fees for work reasonably performed on the client's behalf. There is no evidence that Mr. Zmuda specifically restricted the law firm to writing one letter or even to a fee ceiling.
- [29] Nor should the law firm's fees be reduced simply because the insurer was not persuaded to provide coverage. Such a result was not guaranteed by the law firm and no opportunity was provided to pursue a judicial ruling on the question of coverage.
- [30] Applying the s. 71(2) and (3) of the Legal Profession Act, I find that all of the work performed by the law firm was intended to advance the interests of the client, even if such work was not specifically authorized. I am unable to find that the work was superfluous, unnecessary or extravagant. Some of the work (i.e. the initial letter to the insurer) was authorized by the client.
- [31] As for s. 71(4) factors, I find that the issues involved were neither difficult nor complex. Some expertise in insurance law would be of a benefit to the client.
- [32] The amount involved was never clearly determined but the cost of repairs was estimated at more than \$20,000.
- [33] The client obviously believed that insurance coverage was important when the retainer commenced, but has more recently placed less importance on that result.
- [34] There is some basis for questioning the reasonableness of the time spent drafting the first letter to the independent adjuster. The client has been billed 5.6 hours for the preparation of that letter, albeit at the articulated student's rate of \$125 per hour. Nonetheless, the letter is only eight paragraphs in length; there is no evidence from the author of the letter justifying the time spent.
- [35] The law firm has charged for the initial consultation. I find that a free initial consultation was offered to the client.
- [36] Taking all of these factors into account, I find that there ought to be a modest reduction in the bill. The law firm's fees will be allowed at \$2,300. The disbursements were not seriously contested and are allowed except for the Quicklaw searches. The trend in the law is to characterize such charges as office overhead.
- [37] With the applicable taxes, the bill is allowed at \$2,638.73.

[38] The bill has been reduced by less than 1/6th but the difference is less than \$100 (\$2638.73-\$2,555.65=\$83.08). I find that this small difference represents special circumstances under s. 72(1) of the Legal Profession Act: *Kowarsky and Co. v. Williams* (1998), 78 A.C.W.S. (3d) 614 (B.C.S.C.). In the result, the parties shall bear their own costs of the review.

"C.P. Bouck"

Master C.P. Bouck

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Prepared on 28 October 2026 · Esheria